June 29, 2012

Via Electronic Filing
Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Letter, CG Docket No. 09-158, CC Docket No. 98-170, WC Docket No. 04-36

Dear Ms. Dortch:

Measurement Lab (M-Lab) is committed to an open, transparent broadband measurement based on sound and scientific processes. We believe it is critical for the public to have an accurate understanding of the Commission's broadband measurement program, including any concerns raised about the validity of the measurement. Thus, we are writing to clarify the record with respect to an April 2012 incident affecting the M-Lab servers at a Mountain View site that was discussed in the FCC's June 28, 2012, *ex parte*.

The incident in question was not related to the M-Lab platform, as it could not be directly addressed through corrective action on a component, hardware or software, to which the M-Lab operations committee has administrative access. Rather, the April 2012 incident was the result of faulty Internet Service Provider (ISP) network interconnect, which made it difficult for some testing panels to consistently and correctly reach the M-lab servers. This distinction is a critical one, especially in light of the mis-characterizations made about the stability of the M-Lab platform as a result of the incident.

The network incident in April 2012 was reported to M-Lab operations on April 10, 2012, and resolved on April 13, 2012. It was quickly ruled out as a platform issue by investigating the server nodes themselves and the immediate upstream network connection. Sam Crawford from SamKnows was involved in debugging, and was aware of the technical nature of the problem from the time the issue was identified. It is important to note that during debugging investigation, the issue originally detected by SamKnows could not be consistently and reliably reproduced via pair-wise bandwidth testing between the M-Lab servers in the Mountain View site and nearby M-Lab servers at the Seattle site.

Once the issue was detected, M-Lab operations escalated to Google as the site host. Google ruled out the next upstream network connection and the Google network hosting the Mt. View M-Lab site as containing the cause of the observed issues. Google worked with Level 3, the ISP whose network was experiencing the problem, which consisted of an issue at the interconnect between the Level 3 network and the Google network, on the Level 3 side of that exchange point.

Thus the cause of April 2012 incident was categorically not an M-Lab platform issue, but was a common network issue that could have impacted any user accessing content and services via the given interconnect point. The characterization of this issue as a problem on the M-Lab platform is inaccurate, and calling into question the stability of the M-Lab platform by stakeholders based on the April 2012 is misleading. Furthermore, given the exact nature of the April 2012 incident, it is inappropriate for the Commission to factor the incident into any determination of whether to augment M-Lab participation with additional

non-M-Lab servers that are run and operated by the ISPs whose performance this program is dedicated to measuring.

It is critical that the public record of these discussions accurately reflect the measurement process. We encourage the Commission to be more transparent in future *ex parte* filings to ensure that all parties participating in the measurement collaborative are represented fairly.

Sincerely,

Thomas Gideon
Senior Staff Technologist
New America Foundation's Open Technology Institute

CC: Walter Johnston, James Miller